

REMARKS/ARGUMENTS

The amendment presents new Claim 13. Upon entry of the amendment the active claims will be 1, 3 and 8 to 13.

Claim 1 is amended to restrict the water content of the fresh bread crumbs to the preferred range of 25-50%, basis appearing at page 5 of the specification, the sentence beginning at line 9.

Claim 13 finds basis at page 5, the sentences beginning at lines 6 and 9. The claim merely presents the definition of "fresh bread crumbs" presented in the specification and quoted to at page 5 of the previous response filed October 20, 2004.

Re the Rejections

Reconsideration and withdrawal of the rejection of Claims 1, 3 and 8-12 under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement are requested.

In justification of the rejection, the Official Action questions the lower and upper limits of the range of water content of 15-60% for the fresh bread crumbs. Main claims, as here amended, limits the range to 25-50 wt.%. Since standard fresh breads have a water content of from about 30.6 (Vienna bread) to 35.6 (white bread) according to the Agricultural Research Handbook No. 456 (November 1975) pages of record, the more restricted range should not raise any enablement concerns.

On the matter of how the fresh bread crumbs are made, this is disclosed in the specification on page 5 in the two sentences beginning at lines 6 and 9.

Reconsideration and withdrawal of the rejection of Claims 1, 3 and 8-12 under 35 U.S.C. § 103(a) as being unpatentable over Rispoli et al. are requested.

It is preliminarily emphasized that Applicants are claiming a process for making functional bread crumbs employing “fresh bread crumbs”, which “as used herein refers to bread crumbs obtained before drying” of the pulverized baked product, the quotations being from the disclosure at page 5, the sentence at line 6.

As noted in the previous response, when Rispoli et al. use the expression “bread crumbs” they actually intend dried bread crumbs. The examples employ toasted browned bread crumbs, and in fact the crumbs had an elongated, porous and striated shape and structure, column 5, lines 28 to 31.

To address this matter the Official Action states the following:

Rispoli et al do not place any restriction on the type of bread crumbs used as long as the final product after applying the adhesive is free from liquid and free-flowing. Thus, it would have been obvious to one skilled in the art to select any type of bread crumbs having any degree of moisture content as the starting material. This would have been an obvious matter of choice.

The above overlooks the following disclosure in the paragraph at line 17 of column 3 of Rispoli et al.:

If the adhesive is simply dry mixed with bread crumbs of the critical particle size of this invention without having been applied to and adhering to the surface of bread crumbs, then upon coating a moistened comestible with this mixture and cooking the coated comestible, the resultant coating would be nonuniform, with a substantial amount of the crumbs falling off during coating, handling and cooking.

Clearly, Rispoli et al. restrict their bread crumbs to differentiate from those to which “when the adhesive is simply dry mixed with bread crumbs of the critical particle size of this invention” the resultant comestible coating would be undesirable.

But Applicants’ process is a successful dry mixing procedure. Clearly

(1) Rispoli et al. have effectively limited their bread crumbs to dried bread crumbs, and preferably toasted bread crumbs.

(2) Applicants' process is not simply a matter of selection choice.

In Applicants' process, as the claims recite, fresh crumbs are mixed with powdery starch and/or powdery protein and thereafter dried to produce the functional bread crumbs. Clearly, that is more than a selection of starting materials involved.

The Official Action further states that:

Rispoli does not disclose the water content of the crumbs, the size of the powdery materials, the moisture content of the bread crumbs after drying.

In comment, Applicants urge that the above is so because Rispoli et al. did not appreciate the significance of those parameters, particularly in regard to bread crumbs which are fresh bread crumbs.

Certainly, Rispoli et al., in the last paragraph in column 3, disclose the preparation of an adhesive containing more than a single protein by a process involving grinding. The statement that such adhesive "can then be uniformly applied to the bread crumb surface" must be interpreted as intending that the application is by means of the measures of the Rispoli et al. invention described elsewhere in the patent. This is clear from Example IV of Rispoli et al., particularly at column 7, lines 25 to 36, where a ground adhesive composition is applied using oil.

Clearly, in Applicants' view, the statement that "It would be obvious to one skilled in the art to select such bread crumbs", referring to the breads whose composition is listed in the "Nutritive Value of American Foods," does not support the rejection, which is a rejection based on the Rispoli et al. disclosure which relates to coating dried, not fresh, bread crumbs.

The effect on the comestible (chicken breast) is compared of applying fresh bread crumbs coated with the adhesive composition and dried (Example 15), as disclosed herein, with employment of dried bread crumbs alone (Comparative Example 1) or of application of dried bread crumbs to a comestible in the conventional way, involving "uchiko" (defined in

the sentence bridging pages 1 and 2) and dipping into beaten egg (Comparative Example 2).

The inventive procedures produces a prepared comestible superior to that in Comparative Example 1 and as comparing favorably with the result in Comparative Example 2, without the troublesome process of applying uchiko to the food and dipping into beaten egg.

It is stressed that a large amount of powdery starch and/or powdery protein is made adherent to bread crumbs by using fresh bread crumbs containing water in an amount of 25-50 wt.% as an ingredient, thereby enabling the functional bread crumbs to be obtained with excellent quality. They have the advantage of having been prepared easily and can be cause to adhere sufficiently to a food ingredient even when the crumbs are applied directly to the food, as summarized in the first paragraph on page 4.

Simplicity is to be viewed as a mark of unobviousness, not as evidence of obviousness.

Example 6, pages 12-15, show that powdery sugar can be successfully included, with improved characteristics of the ultimate product, and again, by varying the proportion of the here produced functional mixture, the comestible characteristics may be readily varied in an positive fashion.

This ease of control is not disclosed in Rispoli et al.

New Claim 13 is like Claim 1. It merely expressly defines "fresh bread crumbs". No new issue is involved.

Entry of the amendment as simplifying the issues and as raising no new issues are requested.

Favorable reconsideration is solicited.

Customer Number

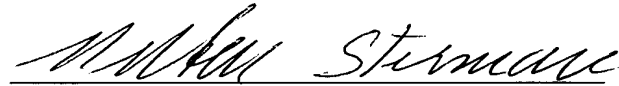
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 06/04)

NFO:MNS\la

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.
Norman F. Oblon

A handwritten signature in cursive script, appearing to read "Milton Serman", written over a horizontal line.

Milton Serman
Registration No. 27,499